IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.514 of 1988

Date of Decision: 14.3.2007

Subhash Malhotra and another

Appellants

versus

Smt.Varsha Devi and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

Present: Shri Munishwar Puri, Advocate for the appellants
Shri N.K.Khosla, Advocate for respondent No.6

Jasbir Singh, J. (Oral)

This appeal has been filed against award dated 15.2.1998, vide which, the Motor Accident Claims Tribunal, Rohtak (in short, the Tribunal) fastened them with liability to pay an amount of Rs.57,600/- alongwith interest, to be paid towards compensation to the respondents-claimants on account of death of Shri Paul Singh, who died in a motor accident on 9.8.1986. Factum of accident and death of Shri Paul Singh therein, is not in dispute. Appellants are the owner and driver of the offending vehicle. It is not in dispute that the offending vehicle (truck) bearing No.HRU 6066 was insured with respondent No.6.

Shri Munishwar Puri, Advocate appearing for the appellants has vehemently contended that in view of the insurance policy (Ex.D2), the Tribunal was not justified in ordering that the compensation amount be paid by the appellants. He further states that the insurance company – respondent No.6 has wrongly been exonerated.

This Court feels that the argument raised is liable to be rejected. Perusal of the insurance policy clearly indicates that additional premium of Rs.16/- was charged for the cleaner and labourers etc. to be employed on the truck. No premium was paid so far as passengers are concerned. In the present case, it is proved on record that the deceased was travelling as a gratuitous passenger at the time of accident. The Tribunal, after looking into the evidence, has observed thus:-

> *"As already mentioned Paul Singh was not an employee of respondent No.1. He was employed in another Transport Company, at Faridabad and on account of his acquaintance with respondent Nos.1 and 2, he obtained a lift in the truck of respondent No.1 as it was coming from Faridabad to Hissar and the deceased had to come to lhis house at Meham which falls on the way. Otherwise, he has no concern with the truck nor he was accompanying with any goods etc., in that truck. Thus he was a gratuitous passenger.*
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> *Learned counsel for the Insurance Company put reliance on the law laid down in 'Joginder Singh v. Pushpa and ors.' 1987 A.C.J. 788, when a passenger was travelling in a good vehicle and it turned turtle as a buffalo and a calf came on the road and the driver could not control the truck and it went off the road and turned turtle resulting in the death of an occupant, it was held that the deceased was not travelling in pursuance of any contract of employment and so the Insurance Company was not liable for the claim. It was further held that on account of vicarious liability of master and servant, the driver was acting in that course of his employment and so the*

owner of the truck was liable even if the driver had acted against the express instructions of the owner or in violation of the rules framed under the statue.

The facts of the aforesaid case are quite similar to the present one. According to Ram Chand, the driver of the truck, the deceased took the lift in the truck with the consent of the owner. Even if, there was no consent of the owner, then also the owner as well as the drivers are liable for compensation. So, respondent Nos.1 and 2 are jointly and severally liable for the payment of the compensation. Issue No.3 is answered accordingly."

This Court feels that the finding given above, is perfectly justified. In written statement, filed by respondent No.6, it has specifically been stated that as the deceased was a gratuitous passenger, the claimants were not entitled to get any compensation amount from the insurance company. While decide issue No.3, it was rightly held that the insurance company was not liable. Law is well settled and their Lordships of the Hon'ble Supreme Court, while dealing with a similar controversy in National Insurance Co. Ltd. v. Bommithi Subbhayamma and others, *(2005-3) PLR 546,* has observed thus:-

"6. In Asha Rani (supra), this Court while overruling Satpal Singh (supra), has clearly held that the Insurance Company is not liable for payment of any compensation for death of a gratuitous passenger travelling in a goods vehicle.

7. Asha Rani (supra), was followed in Oriental Insurance Co.Ltd. v. Devireddy Konda Reddy (2003-2) 134 P.L.R. 47 (S.C.). Yet again, the said view was upheld in National

Insurance Co. Ltd. v. Ajit Kumar (2004-1) 136 P.L.R. 153 (S.C.).

8. The question again came up for consideration before a 3-Judge Bench of this Court, of which we are members, in National Insurance Co.Ltd. v. Baljit Kaur, 2004 A.C.J. 428 (S.C.), wherein upon considering the effect of amendment carried out in Section 147 of the Motor Vehicles Act, 1988 by Motor Vehicles (Amendment) Act, 1994, it was opined;

> *"By reasons of the 1994 amendment what was added is, including owner of the goods or his authorised representative carried in the vehicle'. The liability of the owner of the vehicle to insure it compulsorily, thus, by reason of the aforementioned amendment included only the owner of the goods or his authorised representative carried in the vehicle besides the third parties. The intention of Parliament, therefore, could not have been that the words any person occurring in Section 147 would cover all persons who were travelling in a goods carriage in any capacity whatsoever. If such was the intention there was no necessity of Parliament to carry out an amendment inasmuch as the expression 'any person' contained in Sub clause (i) of Clause (b) of Sub-section (1) of Section 147 would have included the owner of the goods or his authorised representative besides the passengers who are gratuitous or otherwise.*

The observations made in this connection by the Court in Asha Rani (supra), to which one of us Sinha, J, was a party, however, bear repetition:

> *'(26) In view of the changes in the relevant provisions in the 1988 Act vis-à-vis the 1939 Act, we are of the opinion that the meaning of the words ' any person' must also be attributed having regard to the context in which they have been used i.e., a 'third party'. Keeping in view the provisions of 1988 Act, we are of the opinion that as the provisions thereof do not enjoy any statutory liability on the owner of a vehicle to get his vehicle insured for any passenger travelling in a goods vehicle, the insurers would not be liable therefore.'*
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> *In Asha Rani (supra), it has been noticed that Sub-clause (i) of Clause (b) of Sub-section (1) of Section 147 of the 1988 Act speaks of liability which may be incurred by the owner of a vehicle in respect of death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of vehicle in a public place. Furthermore, an owner of a passenger-carrying vehicle must pay premium for covering the risks of the passengers travelling in the vehicle. The premium in view of the 1994 amendment would only cover a third party as also the owner of the goods for his authorised representative and not any passenger carried in a goods vehicle whether for hired or reward or otherwise.*

It is, therefore, manifest that in spite of the amendment of 1994, the effect of the provisions contained in Section 147 with respect to persons other than the owner of the gods or his authorised representative remains the same. Although the owner of the goods or his authorised representative would now be covered by the policy of insurance in respect of a goods vehicle, it was not the intention of the legislature to provide for the liability of the insurer with respect to passengers, especially gratuitous passengers, who were neither contemplated at the time the contract of insurance was entered into, nor any premium was paid to the extent of the benefit of insurance to such category of people."

9. The same view was reiterated in National Insurance Co. Ltd. v. Challa Bharathamma, (2005-1) 139 P.L.R. 98(S.C.); Pramod Kumar Agrawal v. Mushtari Begum, (2005-3) 141 P.L.R. 540(S.C.) and also in National Insurance Co. Ltd. v. V.Chinnamma, (2005-1) 139 P.L.R. 98(S.C.)

10. In view of the aforementioned authoritative pronouncements of this Court, the impugned judgment of the High Court cannot be sustained which is set aside accordingly. This appeal is allowed. We, however, make it clear that the claimants-respondents will be entitled to recover the amount of compensation granted in their favour by the Motor Accident Claims Tribunal from the owner of the vehicle. No costs."

Ratio of the judgment of the Hon'ble Supreme Court, as referred to above, clearly covers the controversy in dispute. No case is made out for interference.

Dismissed.

March 14, 2007 **(Jasbir Singh)**
gk **Judge**